

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BIGLER JOBE STOUFFER, II,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-09-320-C
)	
CHRIS EULBERG, et al.,)	
)	
Defendants,)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed the present action pursuant to 42 U.S.C. § 1983, complaining that his counsel failed to provide effective assistance of counsel during habeas proceedings. Plaintiff also raised complaints about actions taken by prison personnel. Plaintiff filed a Motion for Preliminary Injunction complaining of actions allegedly taken against him during the pendency of the suit. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Robert E. Bacharach. Judge Bacharach has now issued three Report and Recommendations (“R&R”) addressing Plaintiff’s claims.

As for the claim against Plaintiff’s habeas attorney, Judge Bacharach recommends Plaintiff’s claim be re-characterized as brought pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1977), and then dismissed with prejudice, for failure to plead a claim for relief. Plaintiff filed a general Objection to this R&R and sought a lengthy extension of time to file a more specific objection. Despite his requested

extension being granted, Plaintiff has not filed a more specific objection. Thus, Plaintiff is not entitled to de novo review of this issue. See 28 U.S.C. § 636(b)(1)(B); United States v. 2121 E. 30th St., 73 F.3d 1057, 1060 (10th Cir. 1996). Even were de novo review undertaken, the same result would occur. Judge Bacharach correctly noted that Plaintiff's claim must proceed as a Bivens claim, as it involved federal not state actors. Further, as Judge Bacharach determined, there is no support for the allegations raised by Plaintiff. Plaintiff has been given an opportunity to amend his claim to correct the errors but the amended complaint fares no better. Accordingly, dismissal with prejudice is appropriate.

The Court also finds that dismissal of the 18 U.S.C. § 1964 claim without prejudice is proper. Should Plaintiff wish to pursue this claim, he must seek leave to file an amended complaint correcting the deficiencies noted by Judge Bacharach within 20 days of the date of this Order. The Court notes Plaintiff has received multiple lengthy extensions on this issue. No further extension beyond that granted herein will be made.

Turning to the request for preliminary injunction, Plaintiff seeks a preliminary injunction to address various alleged wrongs by prison officials. Judge Bacharach issued an R&R on October 20, 2009, recommending denial of Plaintiff's request. While his request for preliminary injunction was pending, Plaintiff filed a motion seeking leave to submit an affidavit in support of his preliminary injunction request. Judge Bacharach determined that the affidavit would not correct the defects in the motion and recommended denial of that request as well. Plaintiff has filed a timely objection to these R&Rs and they are now reviewed de novo. Upon that review, the Court finds the R&Rs should be adopted in full.

Judge Bacharach correctly noted that Plaintiff's request for preliminary injunction lacks the required specificity. To the extent Plaintiff attempts to correct the issue in his Reply brief and the Objection presented to the undersigned, there is a fatal lack of relationship to the issues raised in the original motion. Accordingly, the request for injunctive relief will be denied.

As set forth more fully herein, the Reports and Recommendations (Dkt. Nos. 26, 64, and 67) are adopted in full. Plaintiff's Bivens claim against Defendant Eulberg is DISMISSED with prejudice. Plaintiff's 18 U.S.C. § 1964 claim against Defendant Eulberg is DISMISSED without prejudice. Plaintiff's Motion for Preliminary Injunction (Dkt. No. 32) is DENIED. Plaintiff's Motion to Submit Affidavit of Attorney (Dkt. No. 44) is DENIED. This matter is returned to Judge Bacharach for further proceedings consistent with the original Order of Referral.

IT IS SO ORDERED this 7th day of December, 2009.


ROBIN J. CAUTHRON
United States District Judge